

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

CREATIVE EXPLORATIONS, INC. and
MONICA BELL
Respondents

Case No.: I-00-40916
I-00-40917

FINAL ORDER

I. Introduction

On August 14, 2001, the Government served a Notice of Infraction (No. 00-40916) upon Respondents Creative Explorations, Inc. and Monica Bell, alleging that they violated 29 DCMR 325.13, which requires each employee of a child development facility to have an annual health examination. The Notice of Infraction alleged that the violation occurred at 1630 30th Street, N.E. Although it charged one violation of § 325.13, the Notice of Infraction alleged two different dates of the alleged infraction – May 3 and May 29, 2001 – and sought a single fine of \$500.

Respondents did not file an answer within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code § 2-1802.05). Accordingly, on September 18, 2001, this administrative court issued an order finding

Respondents in default, assessing the statutory penalty of \$500 required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction (No. 00-40917) on September 25, 2001. Respondents also did not answer that Notice within twenty days of service. Accordingly, on November 14, 2001, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and assessing total penalties of \$1,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B). The Final Notice of Default also set December 12, 2001 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at that hearing to contest liability, fines, penalties or fees.

On November 16, 2001, Respondents filed an untimely plea of Admit with Explanation requesting a suspension or reduction of the fine. In light of that plea, the December 12 hearing was cancelled. On November 28, 2001, the Government filed a response arguing that the full amount of the fine should be imposed.

II. Summary of the Evidence

Respondents assert that their child development facility has closed and, therefore, that there are no records to provide for staff or students. Attached to Respondents' submission is a copy of a letter dated November 10, 2001, in which they ask for cancellation of their license "effective upon receipt of this letter." Respondents provide no explanation for their failure to file timely answers to the Notices of Infraction.

The Government responds that Respondents' facility was operating in May 2001, when the inspector determined that four of its five employees lacked proper health records. It argues

that the violation occurred during ongoing operations and that Respondents' closure of the facility several months later does not justify a reduction in the fine.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 29 DCMR 325.13.
2. On both May 3, 2001 and May 29, 2001, four of the five employees in Respondents' child development facility had not been examined by a physician within a year. An inspector visited Respondents' facility on May 3 and informed them of the violation, yet Respondents did not correct the violation by the date of the inspector's return visit on May 29.
3. Respondents' child development facility closed in November 2001.
4. Respondents have not provided any explanation for their failure to answer the Notices of Infraction within twenty days of service.

IV. Conclusions of Law

1. Based upon their plea, Respondents violated 29 DCMR 325.13. A fine of \$500 may be imposed for that violation. 16 DCMR 3222.1(r).
2. Section 325.13 requires that each employee of a child development facility be examined annually by a physician. The closure of Respondents' facility in November has no bearing upon their failure to comply with that requirement in May. Moreover, the Government could have charged Respondents with four separate violations of the

rule, one for each employee who did not have a current medical examination. In addition, Respondents took no steps to correct the violation after the inspector's first visit on May 3. For all these reasons, no mitigation of the fine is appropriate, and Respondents must pay \$500 for their violation.

3. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). Because Respondents offered no evidence of their reasons for failing to answer the Notices of Infraction, there is no basis for concluding that they had good cause for those failures and, therefore, no basis for reducing the \$1,000 penalty required by statute in addition to the fine.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED **01/04/02**

John P. Dean
Administrative Judge